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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x
3 UNITED STATES OF AMERICA

4 v.

12 CR 934 (RA)

5 SHU FENG XIA,

6 Defendant

-----x

7 New York, N.Y.
8 March 7, 2014
9 5:00 p.m.

10 Before:

11 HON. RONNIE ABRAMS

District Judge

12 APPEARANCES

13 PREET BHARARA

14 United States Attorney for the
Southern District of New York

15 PATRICK EGAN

Assistant United States Attorney

16 JOSHUA L. DRATEL

17 Attorney for Defendant

18
19 -also present-

20 Patsy Ong - Mandarin Interpreter
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1 (In open court; case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record.

4 MR. EGAN: Patrick Egan for the government. Good
5 afternoon, your Honor.

6 THE COURT: Good afternoon.

7 MR. DRATEL: Good afternoon, your Honor. Joshua
8 Dratel for Mr. Xia who is standing beside me.

9 THE COURT: Good afternoon, Mr. Dratel. Good
10 afternoon, Mr. Xia. Do you need another minute?

11 The first thing we are going to do today is I am going
12 to arraign you on the superseding indictment. Have you read
13 the superseding indictment? It's the most recent version of
14 the written charges against you. Have you reviewed that?

15 THE DEFENDANT: Yes.

16 THE COURT: Just try and speak into the microphone if
17 you can. Has it been translated for you?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you discussed it with your attorney?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you want me to read it out loud here in
22 court, the charges, or do you waive its public reading?

23 THE DEFENDANT: It's not necessary.

24 THE COURT: Do you understand that you are charged
25 with conspiracy to commit immigration fraud in violation of 18

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1 United States Code, Section 371?

2 THE DEFENDANT: Yes.

3 THE COURT: You may be seated.

4 If you are having any trouble understanding my
5 questions -- I would like to note for the record that a
6 translator is interpreting for you. If you having any trouble
7 understanding my questions either because of the interpretation
8 or for any other reason, please let me know. OK?

9 THE DEFENDANT: Yes.

10 THE COURT: I think actually we swore in this
11 interpreter once before, but why don't we do it for purposes of
12 this proceeding as well.

13 (Interpreter sworn)

14 THE COURT: I understand that you wish to enter a plea
15 of guilty today. Is that correct?

16 THE DEFENDANT: Yes.

17 THE COURT: Before deciding whether to accept your
18 guilty plea, I am going to ask you certain questions. It's
19 very important that you answer those questions honestly and
20 completely. The purpose of these proceedings is to make sure
21 that you understand your rights, to decide whether you are
22 pleading guilty of your own free will, and to make sure that
23 you are pleading guilty because you are guilty and not for some
24 other reason. Do you understand that?

25 THE DEFENDANT: I understand.

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1 THE COURT: Ms. Cavale, could you swear in the
2 defendant, please?

3 (Defendant sworn)

4 THE COURT: Do you understand that you are now under
5 oath, and that if you answer any of my questions falsely, you
6 may be prosecuted for perjury based on any false answers?

7 THE DEFENDANT: I understand.

8 THE COURT: How old are you, sir?

9 THE DEFENDANT: I was born in 1967. I believe I am
10 47.

11 THE COURT: How far did you go in school?

12 THE DEFENDANT: I finished middle school.

13 THE COURT: Have you ever been treated or hospitalized
14 for any mental illness?

15 THE DEFENDANT: No.

16 THE COURT: Have you ever been addicted to drugs or to
17 alcohol?

18 THE DEFENDANT: No.

19 THE COURT: Are you now or have you recently been
20 under the care of a doctor or a psychiatrist?

21 THE DEFENDANT: No.

22 THE COURT: Have you taken any drugs, medicine, pills
23 or drunken any alcoholic beverages in the past 24 hours?

24 THE DEFENDANT: No.

25 THE COURT: Is your mind clear today?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand what's happening here in
3 court in these proceedings?

4 THE DEFENDANT: I understand.

5 THE COURT: Mr. Dratel, have you discussed this matter
6 with your client?

7 MR. DRATEL: I have, your Honor.

8 THE COURT: Is he capable of understanding these
9 proceedings?

10 MR. DRATEL: Yes, your Honor.

11 THE COURT: Dose understand the rights he would be
12 waiving by pleading guilty?

13 MR. DRATEL: Yes, your Honor.

14 THE COURT: Does either counsel have any doubt as to
15 the defendant's competence to plead guilty at this time?

16 MR. EGAN: No, your Honor.

17 MR. DRATEL: No, your Honor.

18 THE COURT: On the basis of Mr. Xia's responses to my
19 questions, my observations of his demeanor here in court, and
20 representations of counsel, I find the defendant is fully
21 competent to enter an informed plea of guilty at this time.

22 Have you had enough time and opportunity to discuss
23 your case with your attorney, Mr. Xia?

24 THE DEFENDANT: Yes.

25 THE COURT: Have you discussed with him the charges

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1 and any possible defenses you might have to the charge?

2 THE DEFENDANT: Yes.

3 THE COURT: Have you discussed with your attorney all
4 the facts about your involvement in this matter?

5 THE DEFENDANT: Yes.

6 THE COURT: Has he informed you of the consequences of
7 pleading guilty?

8 THE DEFENDANT: Yes.

9 THE COURT: Are you satisfied with your attorney's
10 representation of you?

11 THE DEFENDANT: Yes.

12 THE COURT: Now, what I am going to do is I am going
13 to explain certain Constitutional rights that you have to you,
14 the rights that you will be giving up if you enter a guilty
15 plea. So please listen carefully to what I am about to say.
16 Again, if you don't understand something, either your attorney
17 or I will explain the matter more fully.

18 Under the Constitution and laws of the United States,
19 you have a right to plead not guilty to the charges in the
20 indictment. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: If you did plead not guilty, you would be
23 entitled under the Constitution to a speedy and public trial by
24 jury of those charges. Do you understand that?

25 THE DEFENDANT: I understand.

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1 THE COURT: At that trial, you would be presumed to be
2 innocent, and the government would be required to prove you
3 guilty beyond a reasonable doubt before you could be found
4 guilty. That means that you would not have to prove that you
5 are innocent, and you could not be convicted unless a jury of
6 12 people agreed unanimously that you are guilty beyond a
7 reasonable doubt. Do you understand that?

8 THE DEFENDANT: I understand.

9 THE COURT: At that trial and at every stage of your
10 case, you would be entitled to be represented by an attorney.
11 If you could not afford one, one would be appointed at public
12 expense free of cost to represent you. Do you understand that?

13 THE DEFENDANT: I understand.

14 THE COURT: During a trial, the witnesses for the
15 prosecution would have to come to court and testify in your
16 presence where you could see them and hear them, and your
17 lawyer could cross-examine those witnesses, and if you wanted
18 to, your lawyer could offer evidence on your behalf. You would
19 be able to use the Court's power to compel witnesses to come to
20 court and testify in your defense even if they didn't want to
21 come to court. Do you understand that?

22 THE DEFENDANT: I understand.

23 THE COURT: At a trial, you would have the right to
24 testify if you wanted to, but you would also have the right not
25 to testify. And if you chose not to testify, that could not be

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1 used against you in any way. No inference or suggestion of
2 guilt could be made from the fact that you did not testify. Do
3 you understand that?

4 THE DEFENDANT: I understand.

5 THE COURT: If you were convicted at a trial, you
6 would have the right to appeal that verdict to a higher court.
7 Do you understand that?

8 THE DEFENDANT: I understand.

9 THE COURT: As I said before, you have the right to
10 plead not guilty. Even right now as you sit here for purposes
11 of entering a guilty plea, you have the right to change your
12 mind, to persist in your not guilty plea, and to go to trial.
13 But if you do plead guilty, and I accept your plea, you will be
14 giving up your right to trial and the other rights that go with
15 it that I have just described. If you plead guilty, there will
16 be no trial.

17 All that will remain to be done is for the Court to
18 impose sentence. I will enter a judgment of guilty and
19 sentence you on the basis of your guilty plea after considering
20 whatever submissions I get from you, your attorney and the
21 government, as well as a presentence report prepared by the
22 probation department. There will be no appeal with respect to
23 whether the government could use the evidence it has against
24 you or with respect to whether you did or did not commit this
25 crime. Do you understand that?

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1 THE DEFENDANT: I do.

2 THE COURT: If you plead guilty, do you understand
3 that you will also give up your right not to incriminate
4 yourself since I will ask you questions about what you did in
5 order to satisfy myself that you are guilty as charged. Do you
6 understand that? Yes?

7 THE DEFENDANT: I understand.

8 THE COURT: Are you willing to give up your right to
9 trial and the other rights I just described to you?

10 THE DEFENDANT: Yes.

11 THE COURT: You said before that you read the
12 indictment containing the charge against you. As I understand
13 it, you intend to plead guilty to Count One, the sole count of
14 the indictment. Is that correct?

15 THE DEFENDANT: Yes.

16 THE COURT: Mr. Egan, could you please state the
17 elements of the offense in question?

18 MR. EGAN: Yes, your Honor.

19 To prove this charge at trial, the government would
20 have to prove the following three elements:

21 First, that the defendant entered into an agreement
22 with at least one other person as to obtain a document as
23 alleged in the indictment.

24 Second, that the defendant, and at least one other
25 person, that the document that they entered into an agreement

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1 to obtain was a document prescribed by statute or regulation as
2 evidence of an authorized stay or employment in the United
3 States.

4 And, third, that at the time that the agreement was
5 entered into, the defendant knew that the form I-94, which is
6 the document I described in element two, which was to be
7 provided to the individual who had been granted political
8 asylum by the U.S. Bureau of Citizenship and Immigration
9 Services, was to be procured by means of false claim or
10 statement or to have otherwise been procured by fraud or
11 unlawfully obtained.

12 THE COURT: Mr. Xia, do you understand if you were to
13 go to trial, the government would have to prove those elements
14 beyond a reasonable doubt?

15 THE DEFENDANT: I didn't quite understand that.

16 THE COURT: The elements that the prosecutor read, the
17 government would have to prove those elements beyond a
18 reasonable doubt if you went to trial. Do you understand that?

19 THE DEFENDANT: Yes, I understand.

20 THE COURT: Now, I am going to tell you about the
21 maximum penalties for this crime. The maximum penalty means
22 the most that could possibly be imposed. It doesn't mean it's
23 the sentence you will necessarily receive, but you have to
24 understand that by pleading guilty, you are exposing yourself
25 to the possibility of receiving any combination of punishments

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1 up to the maximums that I am about to describe. Do you
2 understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: First, with regard to your liberty, the
5 maximum term of imprisonment for this crime is five years in
6 prison, which could be followed by up to three years of
7 supervised release. Do you understand that?

8 THE DEFENDANT: I understand.

9 THE COURT: Supervised release means that if you are
10 sentenced to prison, after you are released from prison, you
11 will be subject to the supervision of the probation department.
12 There will be rules of supervised release that you have to
13 follow, and if you violate those rules, you can be returned to
14 prison without a jury trial to serve additional time. Do you
15 understand that?

16 THE DEFENDANT: I understand.

17 THE COURT: You should also understand that parole has
18 been abolished in the federal system, and that if you are
19 sentenced to prison, you will not be released early on parole,
20 although there is a limited opportunity to earn credit for good
21 behavior. Do you understand that?

22 THE DEFENDANT: I understand.

23 THE COURT: In addition to these restrictions on your
24 liberty, the maximum punishment also includes certain financial
25 penalties. The maximum allowable fine is \$250,000 or twice the

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1 gain you received from the crime or twice the loss, whichever
2 is greater. And I am also required to impose a mandatory
3 special assessment of \$100. Do you understand that?

4 THE DEFENDANT: I understand.

5 THE COURT: In addition, I must order restitution to
6 any persons or entities injured as a result of your criminal
7 conduct. The indictment also includes a forfeiture allegation
8 in which the government asserts that you are required to
9 forfeit to the United States all property, real and personal,
10 that constitutes or derives from proceeds traceable to the
11 commission of the offense, including, but not limited to, a sum
12 of United States currency representing the amount of proceeds
13 obtained as a result of the offense. Do you understand that
14 these are the maximum penalties for Count One?

15 THE DEFENDANT: I understand.

16 THE COURT: In addition to these, there are also other
17 consequences that may result from a plea of guilty or any
18 conviction for a felony. Are you a United States citizen?

19 THE DEFENDANT: I'm not.

20 THE COURT: No. So you should then understand that as
21 a result of your guilty plea, you may be deported from the
22 United States; and in certain circumstances, deportation may be
23 mandatory. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Did you discuss the possible immigration

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1 consequences of your plea with your attorney?

2 THE DEFENDANT: Yes.

3 THE COURT: Is the defendant being prosecuted in any
4 other cases in the state or federal system?

5 MR. DRATEL: Not to my knowledge, your Honor.

6 THE COURT: In imposing sentence, Mr. Xia, federal
7 judges are required to consider the recommendations of the
8 Federal Sentencing Guidelines. The guidelines are a
9 complicated set of rules for determining an appropriate
10 sentence. Judges must pay attention to the Sentencing
11 Guidelines in determining a sentence, but, in the end, the
12 judge is required to give the sentence that she believes best
13 satisfies the purposes of the criminal law even if that is
14 higher or lower than a guideline sentence or guidelines
15 recommendation. Have you discussed the Sentencing Guidelines
16 with your attorney?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you understand that the guidelines are
19 only recommendations to the Court?

20 THE DEFENDANT: Yes.

21 THE COURT: So, in this case, the government has
22 written a letter to your lawyer, Mr. Dratel, in which the
23 prosecutors explain how they think the Sentencing Guidelines
24 will apply to this case. That letter says that they believe
25 that the guidelines will provide for a sentence between 24 and

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1 30 months imprisonment. Have you discussed this letter that's
2 dated February 11, 2014 with your attorney?

3 THE DEFENDANT: Yes.

4 THE COURT: This letter, which we call a Pimentel
5 letter, based on a case United States v. Pimentel, is just the
6 prosecutor's present opinion. So, you should understand that
7 the prosecutors can change their mind, and even if they don't,
8 in the end, the sentence is up to me.

9 When I review the guidelines, I am going to review it
10 based on the probation department, I am going to consider what
11 the lawyers argue, but ultimately I may come to a different
12 conclusion, and I may think that the case justifies a higher or
13 lower sentence than the usual one provided by the guidelines.
14 So that letter does not represent any guarantee or promise that
15 your sentence will be within this 24 to 30 month range. Do you
16 understand that?

17 THE DEFENDANT: I understand.

18 THE COURT: In fact, you should understand that if
19 your attorney or anyone else has attempted to predict what your
20 sentence would be, that they could be wrong. I'm telling you
21 that because no one -- not your attorney, not the prosecutor,
22 not even I can -- know for sure now what your sentence will be
23 because that sentence can't be determined until I receive the
24 presentence report, until I have decided what the correct
25 calculation of the range recommended by the Sentencing

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1 Guidelines is, and whether there is any basis for not following
2 that recommendation. So even if your sentence is different
3 from what your attorney or anyone else has predicted, even if
4 it is different from what you've expected, once you've pleaded
5 guilty, you will not be allowed to withdraw your plea. Do you
6 understand that?

7 THE DEFENDANT: I understand.

8 THE COURT: Has anyone made any promise to you or
9 offered you any inducement to plead guilty?

10 THE DEFENDANT: No.

11 THE COURT: Has anyone threatened, bribed or forced
12 you to plead guilty?

13 THE DEFENDANT: No.

14 THE COURT: Has anyone made a promise to you as to
15 what your sentence will be?

16 THE DEFENDANT: No.

17 THE COURT: Now that you have been advised of the
18 charges against you and the possible penalties you face and the
19 rights you are giving up, is it still your intention to plead
20 guilty to this charge of Count One of the indictment?

21 THE DEFENDANT: Yes.

22 THE COURT: So, how do you plead to that charge?

23 THE DEFENDANT: I did not understand that.

24 THE COURT: Do you plead guilty or not guilty to that
25 charge, Count One of the indictment?

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1 THE DEFENDANT: Guilty.

2 THE COURT: Now, tell me in your own words what you
3 did that makes you believe that you are guilty of that charge.

4 THE DEFENDANT: I coached some clients of our clients
5 whether it was based on falun gong or based on religion how to
6 interview at the immigration department.

7 THE COURT: When you say you coached them, what do you
8 mean by that?

9 THE DEFENDANT: Well, just how the clients were to
10 describe -- how the clients were to describe how they were --
11 how they belonged to falun gong or how they were persecuted in
12 China when they were a church member.

13 THE COURT: Were you coaching them to be honest or
14 dishonest?

15 THE DEFENDANT: To be dishonest.

16 THE COURT: Did you do this with other people?

17 THE DEFENDANT: Yes.

18 THE COURT: Did you enter into an agreement with other
19 people to do this, to engage in this conduct?

20 THE DEFENDANT: Could you please explain that?

21 THE COURT: You are charged with conspiracy, with the
22 crime of conspiracy to commit immigration fraud. In a
23 conspiracy, you have to agree with another person to enter an
24 unlawful agreement with another person. You have to knowingly
25 and willfully become a member of a conspiracy. Yes?

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1 MR. DRATEL: I think also -- just that the agreement
2 doesn't have to be express or explicit. It can be tacit or
3 understood among the parties.

4 THE COURT: That is true.

5 Did you agree with other people to engage in this
6 conduct, to coach these people about how to interview at the
7 immigration department?

8 THE DEFENDANT: Yes.

9 THE COURT: When did you do this?

10 THE DEFENDANT: It was the fall of 2007. I'm sorry.
11 It was the fall of 2010 -- 2011.

12 THE COURT: 2011. And where were you? Where did you
13 do these things?

14 THE DEFENDANT: At the Bandrich law firm.

15 THE COURT: Was the Bandrich law firm in Manhattan?

16 THE DEFENDANT: Yes.

17 THE COURT: And the clients you mentioned, were they
18 clients of the Bandrich law firm?

19 THE DEFENDANT: Yes.

20 THE COURT: When you did these things, did you know
21 that what you were doing was wrong and illegal?

22 THE DEFENDANT: Yes.

23 THE COURT: Mr. Egan, are there any additional
24 questions you'd like me to ask?

25 MR. EGAN: Your Honor, it may already be clear, but to

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1 the extent it's not, just to inquire that the purpose of this
2 coaching was to ultimately have these people be granted asylum.

3 THE COURT: Is that true, Mr. Xia? What was the
4 purpose of this coaching?

5 THE DEFENDANT: It was to help them obtain legal
6 status.

7 MR. EGAN: That's fine.

8 THE COURT: All right, Mr. Egan?

9 And the coaching, I believe you said earlier, was to
10 have them be dishonest in their interview with the immigration
11 authorities. Is that correct?

12 THE DEFENDANT: Yes.

13 THE COURT: Anything else, Mr. Egan?

14 MR. EGAN: That's fine, your Honor.

15 THE COURT: Could you summarize what the government's
16 evidence would be if the defendant were to go to trial.

17 MR. EGAN: Yes, your Honor.

18 If the case had proceeded to trial, the government,
19 through witness testimony, consensually recorded phone calls,
20 and documents would have proven that from in or about 2007
21 onward, a law firm known as Feng Ling Liu Law Firm filed
22 approximately more than a thousand fraudulent asylum
23 applications wherein applicants who had not suffered
24 persecution would, with the assistance of the law firm, file an
25 application claiming that they had suffered persecution on the

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1 basis of falun gong Christianity or China's family planning
2 policy.

3 People at the law firm would look at someone's sort of
4 demographic category, assign them a claim without talking to
5 them and then fill out an application with a made-up story of
6 persecution.

7 As the defendant indicated in his allocution, the role
8 of the defendant in this was -- once people were getting ready
9 for their interview -- to coach them on how to stick to their
10 answer, stick to their false story, and, therefore, succeed in
11 their asylum application.

12 The law firm that he worked for was an offshoot --
13 Feng Ling Liu's law firm in order to evade detection split into
14 two law firms creating the Bandrich and Associates which was a
15 law firm that engaged in the same practices that Feng Ling Liu
16 had, and that's the firm the defendant worked at.

17 THE COURT: Thank you.

18 Do both counsel agree there is a sufficient factual
19 predicate for a guilty plea?

20 MR. EGAN: Yes, your Honor.

21 MR. DRATEL: Yes, your Honor.

22 THE COURT: Mr. Dratel, do you know of any valid
23 defense that would prevail at trial?

24 MR. DRATEL: No, your Honor.

25 THE COURT: Does either counsel know of any reason I

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1 should not accept the defendant's plea of guilty?

2 MR. EGAN: No, your Honor.

3 MR. DRATEL: No, your Honor.

4 THE COURT: Mr. Xia, because you acknowledge that you
5 are in fact guilty as charged in the indictment, because I am
6 satisfied that you understand your rights, including your
7 rights to go to trial, and that you are aware of the
8 consequences of your plea, including the sentence that may be
9 imposed, because I find that you are knowingly and voluntarily
10 pleading guilty, I accept your guilty plea and enter a judgment
11 of guilty on Count One of the indictment.

12 The probation department will want to interview you in
13 connection with a presentence report that it will prepare.
14 Does defense counsel wish to be present for any such interview?

15 MR. DRATEL: Yes, your Honor.

16 THE COURT: I order it not take place without your
17 presence.

18 MR. DRATEL: Thank you.

19 THE COURT: If you choose to speak to the probation
20 department, please make sure that everything you say is
21 truthful and accurate. I will read the presentence report very
22 carefully. It will be important to me in deciding what
23 sentence to impose. So if you see any errors in it, call them
24 to your lawyer's attention, and he will call them to my
25 attention before or at the time of sentencing.

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1 The sentencing is scheduled for?

2 THE DEPUTY CLERK: July 11, 2014 at 11:30 a.m.

3 THE COURT: The government shall provide the probation
4 office with its factual statement within seven days.

5 Defense counsel must arrange for defendant to be
6 interviewed by the probation department within the next two
7 weeks.

8 I would like to refer counsel to my individual rules
9 and practices for criminal cases available on the court website
10 which contains some rules regarding sentencing submission. In
11 accordance with these rules, defense submissions are due two
12 weeks prior to sentencing. The government's submissions are
13 due one week prior to sentencing.

14 Is there any objection to continuing the present bail
15 conditions?

16 MR. EGAN: Not from the government, your Honor.

17 THE COURT: Do either of the lawyers have any reason
18 to believe that Mr. Xia is likely to flee or pose a danger to
19 the safety of the community if released?

20 MR. EGAN: No, your Honor.

21 MR. DRATEL: No, your Honor.

22 THE COURT: I find by clear and convincing evidence
23 that Mr. Xia is not likely to flee or pose a danger to safety
24 of any other person of the community if released.

25 Please know that the conditions upon which you are

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1 released up to now continue to apply, and any violation of
2 those conditions could have serious consequences, including
3 revocation of your bail or prosecution for bail jumping.

4 Do you understand that?

5 THE DEFENDANT: I understand.

6 THE COURT: In particular, you must be in this court
7 for sentencing on the date we just set, or, if it's adjourned,
8 at that future date because if you do not show up for
9 sentencing as required, you may be found guilty of the separate
10 crime of bail jumping. Do you understand that?

11 THE DEFENDANT: I understand.

12 THE COURT: Thank you.

13 Are there any further applications?

14 MR. EGAN: Not from the government, your Honor.

15 MR. DRATEL: No, your Honor. Thank you.

16 THE COURT: Thanks. Have a good weekend.

17 (Adjourned)